

ASSEMBLY BILL

No. 414

Introduced by Assembly Member Fox

February 15, 2013

An act to amend Sections 3047 and 3104 of the Family Code, relating to visitation rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 414, as introduced, Fox. Visitation rights: grandparent rights.

Existing law provides that a grandparent may petition the court for visitation rights, and a relocating party may petition the court for visitation rights on behalf of a grandparent when the party is relocating because of his or her military duty. The court may grant visitation if the court finds that the grandparent and grandchild have a preexisting relationship that has created such a bond that granting the grandparent visitation is in the best interests of the child, the court balances the interest of the child in having visitation with the grandparent against the parent's right to exercise his or her parental authority, and, in the case of a party relocating because of his or her military duty, the court finds that visitation will facilitate the child's contact with the relocating party, subject to specified exceptions.

This bill would delete the requirement that a court find that there was a preexisting relationship between the grandparent and the grandchild before granting the grandparent visitation rights.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3047 of the Family Code is amended to read:

3047. (a) A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military duty or temporary duty, mobilization in support of combat or other military operation, or military deployment out of state.

(b) (1) If a party with sole or joint physical custody or visitation receives temporary duty, deployment, or mobilization orders from the military that require the party to move a substantial distance from his or her residence or otherwise has a material effect on the ability of the party to exercise custody or visitation rights, any necessary modification of the existing custody order shall be deemed a temporary custody order made without prejudice, which shall be subject to review and reconsideration upon the return of the party from military deployment, mobilization, or temporary duty.

(2) If the temporary order is reviewed upon return of the party from military deployment, mobilization, or temporary duty, there shall be a presumption that the custody order shall revert to the order that was in place before the modification, unless the court determines that it is not in the best interest of the child. The court shall not, as part of its review of the temporary order upon the return of the deploying party, order a child custody evaluation under Section 3111 of this code or Section 730 of the Evidence Code, unless the party opposing reversion of the order makes a prima facie showing that reversion is not in the best interest of the child.

(3) (A) If the court makes a temporary custody order, it shall consider any appropriate orders to ensure that the relocating party can maintain frequent and continuing contact with the child by means that are reasonably available.

(B) Upon a motion by the relocating party, the court may grant reasonable visitation rights to a stepparent, grandparent, or other family member if the court does all of the following:

1 (i) Finds, *except when the family member is the grandparent of*
2 *the minor child*, that there is a preexisting relationship between
3 the family member and the child that has engendered a bond such
4 that visitation is in the best interest of the child. *In the case of a*
5 *grandparent of the minor child, finds that visitation with the*
6 *grandparent is in the best interest of the child.*

7 (ii) Finds that the visitation will facilitate the child's contact
8 with the relocating party.

9 (iii) Balances the interest of the child in having visitation with
10 the family member against the right of the parents to exercise
11 parental authority.

12 (C) Nothing in this paragraph shall increase the authority of the
13 persons described in subparagraph (B) to seek visitation orders
14 independently.

15 (D) The granting of visitation rights to a nonparent pursuant to
16 subparagraph (B) shall not impact the calculation of child support.

17 (c) If a party's deployment, mobilization, or temporary duty
18 will have a material effect on his or her ability, or anticipated
19 ability, to appear in person at a regularly scheduled hearing, the
20 court shall do either of the following:

21 (1) Upon motion of the party, hold an expedited hearing to
22 determine custody and visitation issues prior to the departure of
23 the party.

24 (2) Upon motion of the party, allow the party to present
25 testimony and evidence and participate in court-ordered child
26 custody mediation by electronic means, including, but not limited
27 to, telephone, video teleconferencing, or the Internet, to the extent
28 that this technology is reasonably available to the court and protects
29 the due process rights of all parties.

30 (d) A relocation by a nondeploying parent during a period of a
31 deployed parent's absence while a temporary modification order
32 for a parenting plan is in effect shall not, by itself, terminate the
33 exclusive and continuing jurisdiction of the court for purposes of
34 later determining custody or parenting time under this chapter.

35 (e) When a court of this state has issued a custody or visitation
36 order, the absence of a child from this state during the deployment
37 of a parent shall be considered a "temporary absence" for purposes
38 of the Uniform Child Custody Jurisdiction and Enforcement Act
39 (Part 3 (commencing with Section 3400)), and the court shall retain
40 exclusive continuing jurisdiction under Section 3422.

(f) The deployment of a parent shall not be used as a basis to assert inconvenience of the forum under Section 3247.

(g) For purposes of this section, the following terms have the following meanings:

(1) “Deployment” means the temporary transfer of a member of the Armed Forces in active-duty status in support of combat or some other military operation.

(2) “Mobilization” means the transfer of a member of the National Guard or Military Reserve to extended active-duty status, but does not include National Guard or Military Reserve annual training.

(3) “Temporary duty” means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(h) It is the intent of the Legislature that this section provide a fair, efficient, and expeditious process to resolve child custody and visitation issues when a party receives temporary duty, deployment, or mobilization orders from the military, as well as at the time that the party returns from service and files a motion to revert back to the custody order in place before the deployment. The Legislature intends that family courts shall, to the extent feasible within existing resources and court practices, prioritize the calendaring of these cases, avoid unnecessary delay or continuances, and ensure that parties who serve in the military are not penalized for their service by a delay in appropriate access to their children.

SEC. 2. Section 3104 of the Family Code is amended to read:

3104. (a) On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both of the following:

(1) Finds that ~~there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation with the grandparent is in the best interest of the child.~~

(2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.

1 (b) A petition for visitation under this section may not be filed
2 while the natural or adoptive parents are married, unless one or
3 more of the following circumstances exist:

4 (1) The parents are currently living separately and apart on a
5 permanent or indefinite basis.

6 (2) One of the parents has been absent for more than one month
7 without the other spouse knowing the whereabouts of the absent
8 spouse.

9 (3) One of the parents joins in the petition with the grandparents.

10 (4) The child is not residing with either parent.

11 (5) The child has been adopted by a stepparent.

12 At any time that a change of circumstances occurs such that none
13 of these circumstances exist, the parent or parents may move the
14 court to terminate grandparental visitation and the court shall grant
15 the termination.

16 (c) The petitioner shall give notice of the petition to each of the
17 parents of the child, any stepparent, and any person who has
18 physical custody of the child, by personal service pursuant to
19 Section 415.10 of the Code of Civil Procedure.

20 (d) If a protective order as defined in Section 6218 has been
21 directed to the grandparent during the pendency of the proceeding,
22 the court shall consider whether the best interest of the child
23 requires that any visitation by that grandparent should be denied.

24 (e) There is a rebuttable presumption that the visitation of a
25 grandparent is not in the best interest of a minor child if the natural
26 or adoptive parents agree that the grandparent should not be granted
27 visitation rights.

28 (f) There is a rebuttable presumption affecting the burden of
29 proof that the visitation of a grandparent is not in the best interest
30 of a minor child if the parent who has been awarded sole legal and
31 physical custody of the child in another proceeding, or the parent
32 with whom the child resides if there is currently no operative
33 custody order objects to visitation by the grandparent.

34 (g) Visitation rights may not be ordered under this section if
35 that would conflict with a right of custody or visitation of a birth
36 parent who is not a party to the proceeding.

37 (h) Visitation ordered pursuant to this section shall not create
38 a basis for or against a change of residence of the child, but shall
39 be one of the factors for the court to consider in ordering a change
40 of residence.

1 (i) When a court orders grandparental visitation pursuant to this
2 section, the court in its discretion may, based upon the relevant
3 circumstances of the case:

4 (1) Allocate the percentage of grandparental visitation between
5 the parents for purposes of the calculation of child support pursuant
6 to the statewide uniform guideline (Article 2 (commencing with
7 Section 4050) of Chapter 2 of Part 2 of Division 9).

8 (2) Notwithstanding Sections 3930 and 3951, order a parent or
9 grandparent to pay to the other, an amount for the support of the
10 child or grandchild. For purposes of this paragraph, “support”
11 means costs related to visitation such as any of the following:

12 (A) Transportation.

13 (B) Provision of basic expenses for the child or grandchild, such
14 as medical expenses, day care costs, and other necessities.

15 (j) As used in this section, “birth parent” means “birth parent”
16 as defined in Section 8512.